

CITY OF SEATTLE
King County, Washington
January 1, 1995 Through December 31, 1995

Schedule Of Findings

1. The City Should Comply With Requirements For Alternative Public Works Contracting Procedures

The city is authorized under Chapter 39.10 RCW to use supplemental alternative public works contracting procedures. One of these procedures is the "design-build" alternative.

The city and the Seattle Symphony Orchestra decided that it would be desirable to cooperate in the development of a public concert hall and in March 1995 entered into a memorandum of understanding, which reflected the city's intention to contract with the symphony as the design-builder.

After a public hearing in July 1995, the city council, by resolution, made a formal determination to use the design-build procedure. In August 1995, the city published a request for letters of interest from qualified design-builders; however, this request included a provision reflecting the city's intent to contract with the Symphony provided that no other organization was willing to contribute \$68 million toward the estimated project cost of \$108.8 million. This request established an August 25 deadline for response. No organization other than the Symphony made such a commitment and in late October, the city executed three agreements with the Symphony: a master agreement, a design agreement, and a construction agreement. In the meantime, the Symphony published a request for qualifications for general contracting services prior to August 25.

By taking these actions, the city violated RCW 39.10.050, which states in part:

Contracts for design-build services shall be awarded through a
competitive process utilizing public solicitation of proposals
(Emphasis ours.)

Moreover, the city's published request for proposals did not include, or did not sufficiently include, the following provisions required by RCW 39.10.050:

A description of the qualifications, if any, to be required of the proposer.

The notice only included a provision that the qualifications would be based on the design-builder's experience and ability to pay all project costs beyond the city's maximum expenditures.

A description of the process the public body will use to evaluate qualifications and proposals.

. . . minority and women enterprise (MWBE) total project goals.

The notice included a provision that the designer-builder comply with city MWBE requirements related to the city's portion of project costs; but it did not quantify these requirements.

The amount to be paid to finalists . . . who are not awarded a design-build contract.

RCW 39.10.050 also states:

The public body shall establish a committee to evaluate the proposals based on the factors, weighing, and process identified in the request for proposals. Based on its evaluation, the public body shall select not fewer than three . . . finalists to submit best and final proposals.

The city did not establish a committee to evaluate proposals, nor did it select three finalists to submit best and final proposals.

As previously discussed, the city executed a construction contract with the symphony. This action was in violation of RCW 39.06.010, which states:

No agency of the state or any of its political subdivisions may execute a contract with any contractor who is not registered or licensed as may be required by the laws of this state.

The Seattle Symphony Orchestra is not a registered contractor. RCW 18.27.020 states:

(1) Every contractor shall register with the department (of Labor and Industries). (2) It is a misdemeanor for any contractor to: advertise, offer to do work, submit a bid, or perform any work as a contractor without being registered as required by this chapter

City officials believed that the symphony was the only organization they could realistically expect to provide the additional \$68 million needed to fund the concert hall project.

By not following proper contracting procedures, the city effectively excluded others from participating in the concert hall project.

We recommend city officials comply with all applicable requirements when electing to use alternative public works contracting procedures.

We further recommend city officials enter into construction contracts only with licensed contractors.

2. The City Should Comply With City and State Public Works Prevailing Wage Requirements

As discussed in Finding 1, in October 1995 the city entered into three agreements with the design-builder, Seattle Symphony Orchestra, for construction of a concert hall, parking garage, and a secondary performance hall. The symphony in turn established B H Music Center, a nonprofit corporation with five symphony directors on its board, to act as its agent in the design and construction process. In April 1996, B H Music Center, acting on behalf of the symphony, entered into a public works agreement in the amount of \$70.5 million with a construction contractor for this project.

This project was not administered in accordance with the following state and city public works prevailing wage requirements.

RCW 39.12.030 states in part:

The specifications for every contract for the construction, reconstruction, maintenance or repair of any public work to which the . . . municipality . . . is a party, shall contain a provision stating the hourly minimum rate of wage, not less than the prevailing rate of wage, which may be paid to laborers, workers, or mechanics in each trade or occupation required for such public work employed in the performance of the contract by either the contractor, subcontractor

The prevailing wage rates were not included in the construction agreement between the City of Seattle and the symphony or between B H Music and the public works contractor. These agreements direct the contractor to obtain the rates from the Department of Labor and Industries.

WAC 296-127-011 states that the prevailing wages applicable to a construction contract are those in effect on the bid opening date unless the contract was awarded six months after the bids were due, in which case the applicable rates are those in effect on the date the contract was awarded. In this case, the applicable prevailing wages would be those in effect on either March 3, 1995, or August 31, 1995, depending on when the contract was awarded.

The symphony's request for proposals had a submission deadline of September 13, 1995. In November 1995, the symphony selected a contractor from three finalists and executed a preconstruction agreement with them. In April 1996, B H Music Center executed a public works contract with this contractor. The contractor used the Washington State Prevailing Wage Rates for Public Works Contracts listing in effect on March 3, 1995, but should have used the listing in effect on August 31, 1995.

Article 11.4.5 of the city's construction agreement with the symphony provides that certified payrolls be remitted to the City of Seattle within 72 hours after the expiration of each pay period. The general contractor's certified payrolls were not reviewed by the city, the symphony, or B H Music Center.

In May 1996, as part of a departmental reorganization, city management eliminated the certified payroll monitoring function.

These conditions increase the likelihood that contractor or subcontractor employees will be paid less than the required wage rate.

We recommend city officials ensure appropriate prevailing wage rates are included in construction agreements or the related bid specifications.

We further recommend city officials ensure weekly certified payrolls are reviewed by appropriate city personnel in a timely manner.

3. The City Should Reconcile Cash And Investments To The General Ledger Balances In A Timely Manner

The city's year-end reconciliation of cash and pooled investments includes an item captioned "Accrued receivable and reconciling items" in the amount of (\$121,074). This amount is actually an aggregate of unidentified differences, some of which may date from 1992. Our audit report for 1993 contained a finding on this issue and city staff have been able to identify and reduce portions of the original imbalance. However, our follow-up in June 1996 revealed that no further progress had been made and it seems unlikely that the remaining differences will be identified.

Because unidentified differences were allowed to go unresolved from year to year, the year-end reconciliation of cash and pooled investments became ever more difficult.

When prompt and accurate reconciliations are not made, city officials have no assurance that errors or irregularities will be detected in a timely manner.

We recommend the city finance department maintain a current and complete reconciliation of cash and pooled investments and not allow differences to go unresolved.